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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TOM SUNGWON SHIN,

Defendant and Appellant.

G056674

(Super. Ct. No. 18CF0488)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Larry Yellin, Judge. Affirmed.

Roger Jon Diamond for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Alana Cohen Butler and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

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A defendant can be convicted of pimping under a “support” theory or a “solicitation” theory: “any person who, knowing another person is a prostitute, lives or derives *support* . . . in whole or in part from the earnings or proceeds of the person’s prostitution . . . , or who *solicits* or *receives compensation for soliciting* for the person, is guilty of pimping . . . .” (Pen. Code, § 266h, subd. (a), italics added.)

Defendant Tom Sungwon Shin posted ads online for Queen’s Day Spa (QDS), a prostitution business fronting as a massage parlor. Shin was paid \$1,000 a month. A jury found Shin guilty of pimping. He raises several arguments on appeal.

Shin argues the court erred by admitting evidence he posted ads online for other massage parlors. We disagree; these “uncharged acts” were probative of Shin’s knowledge. (Evid. Code, § 1101, subd. (b).)<sup>1</sup> Shin argues the court violated due process by instructing the jury on both theories of pimping when only one was alleged in the pleadings. We disagree; Shin was given adequate notice through the preliminary hearing evidence and in other ways. Shin argues the court erred by refusing to grant a defense witness immunity from prosecution. We disagree; courts have no such authority.

Shin also raised several other miscellaneous arguments in his briefs in a cursory fashion with no citations to the record or to legal authorities. Consequently, Shin has forfeited these arguments on appeal. (*People v. Marshall* (1990) 50 Cal.3d 907, 945, fn. 9.) In any event, these arguments all lack merit. Thus, we affirm the judgment.

## I

### FACTS AND PROCEDURAL HISTORY

In June 2016, Investigator David Pultz received a tip that prostitution was occurring at QDS, a Stanton massage parlor. Pultz began an investigation, finding ads for QDS on backpage.com, a website that routinely advertised prostitution services. The

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<sup>1</sup> Further undesignated statutory references are to the Evidence Code, and further references to section 1101, subdivision (b), are generally to section 1101 (b).

ads indicated that QDS was soliciting prostitution, rather than legitimate massage services (e.g., “Cutest Asian girls ever. So sweet. Very pretty”). Pultz also found reviews of QDS on a website where men posted about illicit massage parlors.

Investigator Pultz conducted surveillance on QDS and saw circumstances consistent with prostitution (e.g., only men entered, and they left after 15 to 30 minutes). Pultz spoke with a man who had just left QDS, he said that an Asian female has masturbated him in exchange for \$60 (a “hand job”). An undercover sheriff’s deputy entered QDS and paid \$35 for a purported half-hour massage. After he undressed and laid on a massage table, an Asian female later identified as Huong N., asked the deputy through hand gestures whether he wanted a hand job.

Investigator Pultz and another investigator entered QDS to conduct a search. The investigators found items consistent with prostitution (cash, ledgers, and pay-owe sheets). Huong had three cell phones, and she appeared to be living at QDS. Huong admitted that she gave hand jobs. Huong said that Charlie D. was the owner and she paid him half the money.

### *Evidence Concerning Shin*

Huong told the investigators that she paid \$1,000 each month to “John” for advertising services. Huong said that “John” was due at QDS to pick up the money. When Shin arrived at QDS, Huong identified him as “John.” Investigators found approximately \$800 in cash on Shin’s person, a bank receipt for a \$600 cash deposit, and a cell phone. In Shin’s car, investigators found \$424 in cash, a receipt book, and a ledger, which included “a notation for Queen’s.” On Shin’s cell phone, investigators found “stock photos” of scantily clad women, of a type that were commonly used for prostitution ads. Shin’s phone also contained photographs of login and payment pages for Backpage.com.

The investigators found text conversations between Huong and Shin. Huong complained to Shin regarding online reviews that “are not true about my shop. . . . Here we never do BJ but on review says there is a BJ. I don’t know why on review say that[] everybody here only do HJ . . . .” Shin replied, “Yes the review websites are terrible.” Huong regularly updated Shin on the number of customers: “Thanks a lot JOHN I’ve just finished a customer he very, very nice[.]” Shin texted Huong, “I am installing a ‘counter’ for massage ads so we can see how many people click ads[.]”

The investigators obtained records from Backpage.com, which were connected to e-mail addresses on Shin’s phone. The records contained ads for other massage parlors connected to Shin.

### *Court Proceedings*

In February 2018, the People filed a complaint, which alleged Shin committed one count of pimping and four counts of pandering. The trial court dismissed the pandering counts.<sup>2</sup> Following a preliminary hearing, the People filed an information alleging one count of pimping.

In August 2018, a jury found Shin guilty of pimping. The court imposed a mandatory prison sentence, choosing the low term of three years.

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<sup>2</sup> The pandering counts were dismissed due to an agreement between the parties in an earlier case that began in 2016, which the People had dismissed and refiled.

## II

### DISCUSSION

Shin asserts the trial court: A) improperly admitted evidence of uncharged acts; B) violated due process by instructing the jury on both the support and solicitation theories of pimping; C) erred by refusing to grant Charlie D. (the purported owner of QDS) immunity from prosecution; and D) committed several other miscellaneous errors.

#### *A. Admission of Uncharged Acts*

Shin argues that the trial court erred by admitting ads for other massage parlors under section 1101 (b). We disagree.

A trial court's ruling under section 1101 (b) is reviewed for an abuse of discretion. (*People v. Moore* (2016) 6 Cal.App.5th 73, 92.) As such, "we will not disturb the trial court's ruling 'except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" (*People v. Goldsmith* (2014) 59 Cal.4th 258, 266.)

#### *1. General Legal Principles*

Generally, evidence "of a person's character or a trait of his or her character (whether in the form of an opinion, evidence of reputation, or evidence of *specific instances of his or her conduct*) is *inadmissible* when offered to prove his or her conduct on a specified occasion." (§ 1101, subd. (a), italics added.) However, uncharged acts *are admissible* "when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, *knowledge*, identity, absence of mistake or accident . . .) other than [a person's] disposition to commit such an act." (§ 1101 (b), italics added.)

The admissibility of uncharged acts ""depends upon three principal factors: (1) the *materiality* of the fact sought to be proved or disproved; (2) the *tendency* of the uncharged [act] to prove or disprove the material fact; and (3) the existence of any

*rule or policy* requiring the exclusion of relevant evidence.””” (*People v. Moore, supra*, 6 Cal.App.5th at p. 92.) “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will . . . create substantial danger of undue prejudice . . . .” (§ 352.)

## *2. Relevant Proceedings*

The prosecutor told the court the proffered evidence included ads for other massage parlors, and that Investigator Pultz would testify: “That those ads look like the type he has learned, in his training and experience, that are consistent with prostitution . . . .” The prosecutor sought to introduce the evidence to show Shin’s knowledge under section 1101 (b): Shin “has a very particular manner in which he posts these ads. It is very evident that the same person is posting these ads, and he even discusses with Huong what is going to generate more customers. . . . [¶] . . . The defendant is not charged with anything as it relates to those particular establishments, but . . . the probative value of all the ads that he posts [are] extremely high . . . .”

The court ruled that the ads were relevant because “any evidence that shows there is knowledge is relevant. Any evidence that shows there is a lack of knowledge would be relevant for the defense.” As far as prejudice, the court cited case law and ruled that evidence was “prejudicial in that it may show knowledge, but it’s not prejudicial in that it may flame the passions of a jury.” The court admitted the evidence of the other massage parlor ads to “show knowledge.”

## *3. Analysis*

In order to prove pimping, the prosecution was required to prove that Shin “knew that [Huong N.] was a prostitute.” (See CALCRIM No. 1150.) According to the testimony of Investigator Pultz, the other ads—that were apparently designed and posted by Shin—were consistent with massage parlors that routinely engaged in prostitution.

Therefore, the Backpage.com ads for massage parlors other than QDS logically tended to prove Shin's knowledge of prostitution. As such, the court did not abuse its discretion in finding that the ads were admissible under section 1101 (b).

Indeed, other trial courts have admitted uncharged acts to show a defendant's specific knowledge of prostitution. (*People v. Scally* (2015) 243 Cal.App.4th 285 (*Scally*).) In *Scally*, defendant was on trial for pimping and pandering Dakota. (*Id.* at pp. 286-287.) The prosecution introduced text messages between defendant and Dakota. An experienced vice officer opined the messages were "consistent with a pimp-prostitute relationship." (*Id.* at p. 289.) The court allowed the prosecution to introduce similar text messages with persons other than Dakota, which defendant contended was improper character evidence. The Court of Appeal disagreed: "We conclude the evidence was relevant to rebut the defense that the prostitute was merely defendant's girlfriend--a nonpropensity basis for relevance – and thus we affirm." (*Id.* at p. 287.)

Here, when the trial court analyzed the admissibility of the proffered evidence, it relied in part on *Scally*, *supra*, 243 Cal.App.4th 285. The court said: "In this case this evidence of these ads that are connected . . . to Mr. Shin's phone are exactly the evidence that *Scally* says is lawfully admissible for a jury to decide." As far as prejudice, the court noted that *Scally* involved "language between a pimp and a prostitute. [¶] I would point out that that type of [language] would certainly seem more inflammatory than just ads in a paper or ads on a computer website."

We agree with the trial court's analysis and its comparison of the evidence in *Scally* (other text messages demonstrating defendant's knowledge of prostitution), with the evidence in this case (other online ads demonstrating Shin's knowledge of prostitution). But more importantly, the court's legal analysis plainly reveals that it did not make its evidentiary ruling in an arbitrary, capricious, or patently absurd manner. Thus, Shin has shown no abuse of the court's discretion.

## *B. Support and Solicitation Theories of Pimping*

Shin argues the trial court improperly instructed the jury on two theories of pimping (support and solicitation), and thereby violated due process because only one theory (support) was alleged in the accusatory pleadings. We disagree.

We review instructional error claims de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) We determine whether the trial court fully and fairly instructed the jury on the applicable law. (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) A defendant's claim on the adequacy of notice involves questions of constitutional law and mixed questions that are predominantly legal. (*People v. Quiroz* (2013) 215 Cal.App.4th 65, 70.) As such, we will independently review Shin's due process argument.

### *1. General Legal Principles*

A criminal pleading “may be in the words of the enactment describing the offense or declaring the matter to be a public offense, *or in any words sufficient to give the accused notice of the offense of which he is accused.*” (Pen. Code, § 952, italics added.) “““There, in a nutshell, is stated the principle of our present simplified form of pleading a criminal offense-*the accused is entitled to notice of the offense of which he is charged but not to the particular circumstances thereof, such details being furnished him by the transcript of the testimony upon which the indictment or information is founded.*””” (*People v. Gibson* (2001) 90 Cal.App.4th 371, 384 (*Gibson*), italics added.)

“[T]he due process guarantees of the state and federal Constitutions require that a criminal defendant receive notice of the charges adequate to give a meaningful opportunity to defend against them.” (*People v. Seaton* (2001) 26 Cal.4th 598, 640.) A pleading is “legally sufficient” if it “put[s] the defendant upon notice of the multiple theories of liability.” (*Perry v. Robertson* (1988) 201 Cal.App.3d 333, 341.)

Due process does not require that all of the People's evidence and theories be disclosed in the pleadings. Rather, due process is satisfied if a defendant has received

notice of the critical details of the People's case through pretrial discovery procedures, the pleadings, the preliminary hearing evidence, and by other means. (*People v. Jones* (1990) 51 Cal.3d 294, 317; see *People v. Roberts* (1953) 40 Cal.2d 483, 486-487 [notice is adequate where factual basis of the prosecution's theory is presented at the preliminary hearing]; see also *People v. Quiroz, supra*, 215 Cal.App.4th at pp. 70-71 [notice requirements are satisfied "by the People's express mention of that theory before or during trial sufficiently in advance of closing argument"].)

Again, both theories of pimping are included in the statute: "Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives *support* or maintenance in whole or in part from the earnings or proceeds of the person's prostitution . . . , or who *solicits* or receives compensation for *soliciting* for the person, is guilty of pimping, a felony . . . ." (Pen. Code, § 266h, subd. (a), italics added.)<sup>3</sup> The common definition of the word "solicit" is "to entice or lure esp. into evil." (Webster's 11th Collegiate Dict. (2007) p. 1187, col. 2.)

## 2. Relevant Proceedings

Investigator Pultz testified at the preliminary hearing. The prosecutor asked: "In your training and experience, typically how do such massage parlors *solicit* for their sexual services?" (Italics added.) Pultz responded, "These massage parlors *solicit* on two fronts. Before you enter the establishment, *through social media and other advertising*. And then also, there is a manner of addressing it once you are inside the establishment." (Italics added.) Pultz described Backpage.com as a website "typically where massage parlors and prostitution ads will occur."

Investigator Pultz testified that Huong told him that she paid Shin \$1,000 a month "for advertising for the massage parlor. And we talked about specific web sites

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<sup>3</sup> Penal Code section 266h, subdivision (b)(1), provides for lengthier prison terms: "If the person engaged in prostitution is a minor . . . ."

and places where those ads were placed.” Investigator Pultz described the texts between Huong and Shin, which “were specifically discussing advertisements for the business, using photos of certain girls for the business, talking about problems with the business, with customers.” Pultz testified that cash and a ledger was found in Shin’s car, indicating Shin had received cash payments from QDS. Pultz opined that Shin “had an ongoing business relationship where he had known about sexual acts being done at the business to make money and [Huong] was paying him to advertise – advertise for those acts to continue to occur.”

The information alleged: “On or about and between August 1, 2015 and June 30, 2016, in violation of Section 266h (a) of the Penal Code (PIMPING), a FELONY, TOM SUNGWON SHIN, knowing Huong N was a prostitute, did unlawfully live and derive support and maintenance in whole and in part from the earnings and proceeds of the prostitution of Huong N.”

Before the trial, the People filed a motion in limine seeking to introduce prior incidents. In a 2005 incident, police searched an illicit massage parlor and Shin “admitted that he was the owner and operator of the business.” The People alleged that Shin “was familiar and had knowledge of the laws of *soliciting* prostitution, pimping, and pandering after his arrests in 2001 and 2005, as well as the revocation of his acupuncture license in 2003.”<sup>4</sup> (Italics added.)

The trial court used the pattern instruction for pimping, which includes the support and solicitation theories within optional brackets: “To prove the defendant is guilty of pimping, the People must prove that: [¶] 1. The defendant knew that Huong N. was a prostitute; [¶] AND [¶] 2. The money/proceeds that Huong N. earned as a prostitute supported defendant, in whole or in part. [¶] OR [¶] 2. The defendant asked for payment or received payment for soliciting prostitution customers for Huong N. [¶]

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<sup>4</sup> The court did not admit this evidence based on section 352 considerations.

A prostitute is a person who engages in . . . any lewd act with another person in exchange for money or other compensation.” (CALCRIM No. 1150.)

### 3. Analysis

A court does not deny a defendant due process by instructing on both theories of pimping, even though only one theory had been alleged in the accusatory pleading. (*Gibson, supra*, 90 Cal.App.4th at p. 384.) In *Gibson*, a female defendant ran a ““service”” that involved employees performing sex acts for money. (*Id.* at pp. 376-377.) Defendant advertised on a website. (*Id.* at p. 379.) The prosecution filed an information charging defendant with five counts of pimping and related crimes. (*Id.* at pp. 375-376.) The information set forth the support theory of pimping, but not the solicitation theory. On appeal, defendant argued “that she was denied due process because she had no notice the People were relying on the solicitation component . . . .” (*Id.* at p. 384.)

The Court of Appeal disagreed, noting that: “““Notice of the particular circumstances of the offense is given not by detailed pleading but by the transcript of the evidence before the committing magistrate . . . .””” (*Gibson, supra*, 90 Cal.App.4th at pp. 384-385.) The appellate court held the “evidence presented at both the preliminary hearing and at trial clearly gave [defendant] adequate notice of the charges against her, which included all acts proscribed by [Penal Code] section 266h, subdivision (a) . . . . Although we do not condone what appears to be careless pleading by the prosecution, we find no detriment to [defendant].” (*Id.* at p. 385.)

Here, the same rationale applies as in *Gibson, supra*, 90 Cal.App.4th 371. The preliminary hearing evidence included testimony from Detective Pultz that Shin was paid \$1,000 for placing advertising online for QDS; indeed, Pultz used the word “solicit” during his testimony. Pultz offered his opinion, which reinforced both the support and solicitation theories. The prosecution filed a brief before trial alleging that Shin “was

familiar and had knowledge of the laws of *soliciting* prostitution.” (Italics added.) The pattern jury instruction includes both the support and solicitation theories as options.

In short, we find Shin received adequate notice through the preliminary hearing evidence, the specific statute alleged in the information, the People’s pretrial brief, and through the standard pattern jury instruction, such that he could be found liable for pimping under either the support or the solicitation theory. Thus, we find that the trial court did not commit error when it instructed the jury under either or both the support or the solicitation theories.

Shin argues: “The effect of giving the jury instruction was to allow the prosecution to amend the Information without a necessary court order.” Shin cites *Jones v. Superior Court* (1971) 4 Cal.3d 660 (*Jones*), for the proposition: “The California Supreme Court has condemned material variances where the defense is prejudiced or misled.” In *Jones*, a magistrate dismissed rape, sodomy and oral copulation charges after finding (1) the alleged victim consented to intercourse, and (2) sodomy and oral copulation did not occur. (*Id.* at pp. 663-664.) The People filed an information recharging the offenses; the trial court denied the defendants’ section 995 motion. (*Id.* at p. 664.) The *Jones* court issued a writ restraining further proceedings against the defendants. (*Id.* at p. 668.) The court stated the district attorney was not permitted “to ignore material factual findings of the magistrate.” (*Id.* at p. 666.)

Here, the People charged Shin with pimping and the magistrate found sufficient evidence to bound Shin over to trial, but the magistrate made no factual findings. Therefore, the holding in *Jones* has no application to the facts in this case. Shin cites two other state court opinions, but those cases are equally unpersuasive. (See *People v. Braddock* (1953) 41 Cal.2d 794, 800 [variance between victim’s name as alleged in the information and the proof at trial did not mislead defendant in the preparation of his defense]; *People v. Williams* (1945) 27 Cal.2d 220, 226 [information

that alleged wrong address was not relevant because “technical or trifling matters of discrepancy will not furnish ground for reversal”].)

### *C. Immunity From Prosecution*

Shin argues the trial court abused its discretion by not ordering Charlie D. (the alleged owner of QDS) either to testify or to grant him immunity from prosecution. We disagree.

#### *1. General Legal Principles*

The Fifth Amendment to the United States Constitution provides: “No person . . . shall be compelled in any criminal case to be a witness against himself . . . .” The constitutional privilege applies to the states. (*Malloy v. Hogan* (1964) 378 U.S. 1.) “To the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him.” (§ 940.)

“Whenever the proffered evidence is claimed to be privileged under Section 940, the person claiming the privilege has the burden of showing that the proffered evidence might tend to incriminate him; and the proffered evidence is inadmissible unless it clearly appears to the court that the proffered evidence cannot possibly have a tendency to incriminate the person claiming the privilege.” (§ 404.) A “court may not force a witness to make incriminating statements simply because it believes an actual prosecution is unlikely. The test is whether the statement might tend to incriminate, not whether it might tend to lead to an actual prosecution.” (*People v. Seijas* (2005) 36 Cal.4th 291, 305.) We apply an “independent standard of review . . . to a finding that the witness could assert the privilege against self-incrimination.” (*Id.* at p. 304.)

The decision to grant a witness immunity lies exclusively with the prosecution. (See *In re Weber* (1974) 11 Cal.3d 703, 720; see also *People v. Masters*

(2016) 62 Cal.4th 1019, 1050-1051 [“the power to confer immunity is granted by statute to the executive”].) Further, prosecutors have no general obligation to provide immunity to a witness to assist the defense. (*People v. Samuels* (2005) 36 Cal.4th 96, 127.) Moreover, the denial of immunity to defense witnesses has not been held to violate a defendant’s rights to due process or equal protection. (*People v. Sutter* (1982) 134 Cal.App.3d 806, 816-817; *People v. Traylor* (1972) 23 Cal.App.3d 323, 331-332.)<sup>5</sup>

## *2. Relevant Proceedings*

Before trial, Shin asked the court to grant Charlie D. immunity from prosecution: “we believe [Charlie D.] will confirm he was the owner of the establishment, he was the one getting half the money, and he was operating.” The court denied Shin’s request. Prior to Charlie D. being called to the stand, the court read a transcript in which Charlie D. admitted that he owned QDS. The court told him, “So I think when you testify, there’s the possibility that you may be incriminating yourself, if you testify about certain things.” The People declined to offer Charlie D. immunity from prosecution. Thereafter, Charlie D. invoked his Fifth Amendment right to remain silent.

## *3. Analysis*

If Charlie D. were to have admitted that he owned QDS, he arguably could have implicated himself in prostitution related crimes (e.g., pimping or pandering).

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<sup>5</sup> Some federal appeals courts have held that trial courts have the inherent authority to grant “judicial immunity.” (See, e.g., *Government of Virgin Islands v. Smith* (3d Cir. 1980) 615 F.2d 964, 971.) But intermediate federal appellate court opinions are not binding authority in California courts. (*People v. Figueroa* (1992) 2 Cal.App.4th 1584, 1586-1587.) The California Supreme Court has also occasionally *assumed*—for the sake of argument—that courts have such authority. (See, e.g., *People v. Stewart* (2004) 33 Cal.4th 425, 468.) But we have found no published opinion, either by the United States Supreme Court, the California Supreme Court, or by a California Court of Appeal, which authorizes a California trial court to grant any witness immunity from prosecution.

Therefore, the trial court did not commit error in finding that Charlie D. lawfully asserted his constitutional privilege not to testify. Further, based on well-settled case law, the trial court properly refused to grant him immunity from prosecution.

Shin argues “there was no likelihood that the prosecution would prosecute Charlie [D.] based on his admission that he was the owner of the establishment.” But that argument is not relevant to our analysis. The test is whether the statement might tend to incriminate, not whether it might lead to an actual prosecution. Further, even if we were to assume the trial court had the authority to grant “judicial immunity,” we would find no prejudicial effect from the denial of such immunity; Charlie D.’s ownership of QDS was not a relevant or plausible defense to Shin’s criminal liability.

#### *D. Miscellaneous Forfeited Arguments*

As we stated in the introduction, Shin raised several miscellaneous arguments in his written briefs in a cursory fashion with no citations to the record or to legal authorities. Consequently, Shin has forfeited these arguments on appeal. (*People v. Marshall, supra*, 50 Cal.3d at p. 945, fn. 9.) In any event, these arguments all lack merit.

##### *1. Refusal to Order Handwriting Exemplar*

“‘Relevant evidence’ means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.” (§ 210.) A trial court has broad discretion to determine the relevance of evidence, and its ruling will not be disturbed on appeal unless it has acted in an arbitrary, capricious, or patently absurd manner. (*People v. Jones* (2013) 57 Cal.4th 899, 947.)

Here, Shin argues the trial court erred by refusing to order Charlie D. to provide a handwriting exemplar (to establish that it matched QDS’s business license). The court said, “I can’t see any relevance on the authentication of whether this the

[Charlie D.] who it is.” The court noted that Investigator Pultz had identified Charlie D. in front of the jury. There was also no dispute that Charlie D. was identified by Huong as the owner of QDS. Thus, we agree with the trial court as to the lack of relevance and find no abuse of discretion.

## *2. Ruling Regarding Declaration Against Penal Interest*

“Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant’s pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability . . . that a reasonable man in his position would not have made the statement unless he believed it to be true.” (§ 1230.) A court’s ruling regarding a statement against penal interest is reviewed for an abuse of discretion. (*People v. Alexander* (2010) 49 Cal.4th 846, 916.)

Here, Shin sought to introduce a transcribed statement by Charlie D. to Shin’s defense counsel. The trial court reviewed the transcript and noted that Charlie D. admitted that he was the owner of QDS, but he did not discuss “any knowledge of prostitution that goes on in that place.” The court ruled that the statement was not a declaration against penal interest, which “has to be made at the time when he realizes that he’s putting himself in a criminal, a social, or a pecuniary peril, and I don’t have that from the content of this statement.” We agree with the court’s analysis; thus, we find no abuse of the court’s discretion.

## *3. Refusal to Give Pinpoint Instruction*

Generally, a defendant has a right to an instruction that pinpoints the defense theory. (*People v. Johnson* (2009) 180 Cal.App.4th 702, 707.) However, a court may “properly refuse an instruction offered by the defendant if it incorrectly states the law, is argumentative, duplicative, or potentially confusing [citation], or if it is not

supported by substantial evidence [citation].” (*People v. Burney* (2009) 47 Cal.4th 203, 246.) We independently review a claim of error based on the failure to give a requested pinpoint instruction. (*Johnson*, at p. 707.)

Shin requested the trial court define the word “solicitation” to the jury as follows: “‘The placement of an advertisement in a journal or on the Internet is not the same as solicitation. Solicitation requires face to face or more direct contact with a potential customer.’” The trial court refused, finding that the word solicitation should be given its ordinary meaning. However, the court allowed Shin to make his semantic arguments to the jury. Shin has cited no legal authorities in support of his proposed definition of solicitation. Thus, we find no error.

#### *4. Alleged Isolated Acts of “Misconduct”*

A defendant is entitled to a fair trial, but not a perfect one. (*People v. Snow* (2003) 30 Cal.4th 43, 78.) A reversible error exists only if there is a reasonable probability that the error altered the outcome. (*People v. Watson* (1956) 46 Cal.2d 818, 836-837.) A motion for a mistrial should only be granted when the “chances of receiving a fair trial have been irreparably damaged.” (*People v. Ayala* (2000) 23 Cal.4th 225, 283-284.) “To preserve a claim of prosecutorial misconduct for appeal, a criminal defendant must make a timely objection, make known the basis of his objection, and ask the trial court to admonish the jury.” (*People v. Brown* (2003) 31 Cal.4th 518, 553.) We assume a jury followed the court’s instructions. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1234.)

Investigator Pultz testified that when he talked to Shin about searching his car, “he asked for an attorney.” The court sustained Shin’s objection and struck Pultz’s answer, but refused to grant a mistrial. The court later admonished the jury: “I just want to emphasize that when I strike the testimony like I did there, you can’t consider it for any reason at any time.” We agree with the trial court’s implicit ruling that Pultz’s brief

comment did not cause irreparable damage to Shin's defense. We also assume the jurors heeded the court's admonishment and followed its instructions.

Shin argues: "The prosecution told the jury during closing argument that it was defendant who requested the jury trial." Shin also argues: "Investigator Pultz said that he was introduced to Charlie [D.] by attorney Diamond." As far as both statements, we find no objection in the record, so the trial court could not have possibly made any erroneous rulings regarding these issues. Further, Shin has not established any cognizable legal error, nor has he shown any demonstrable prejudice. Thus, we summarily reject these arguments.

#### *5. Sufficiency of the Evidence*

"In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [U]nless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction." (*People v. Young* (2005) 34 Cal.4th 1149, 1181.) "We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Nelson* (2011) 51 Cal.4th 198, 210.) This review "is generally considered the most difficult standard of review to meet, as it should be, because it is not the function of the reviewing court to determine the facts." (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.)

Shin argues: "No evidence was presented that money went from a customer of a prostitute to the defendant. In order for there to be pimping money paid to a prostitute by a customer should wind up in the hands of the pimp. That did not happen here." We disagree. Based on the totality of the evidence, a jury could reasonably deduce: 1) Shin knew Huong was working as a prostitute; and 2) the money Huong earned as a prostitute supported Shin in whole or in part; or 2) Shin asked for payment or

received payment for soliciting prostitution customers. (See CALCRIM No. 1150.) In sum, we find sufficient evidence to support the jury's guilty verdict.

### III

#### DISPOSITION

The judgment is affirmed.

MOORE, ACTING P. J.

WE CONCUR:

IKOLA, J.

THOMPSON, J.